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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,808	06/27/2003	Sheldon Plutsky	57210-5023	6272

24574 7590 02/20/2004

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 02/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary	Application No. 10/607,808	Applicant(s) PLUTSKY, SHELDON	
	Examiner Jennifer E. Novosad	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06272003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to the application filed June 27, 2003 and the preliminary amendment filed therewith which canceled claims 1-20 and added claims 21-34.

Priority

This application filed under former 37 CFR 1.60 lacks the necessary reference to the prior application. The sentence under the heading "Related Applications" in lines 4-5 of page 1, should be changed to "This is a continuation of Application No. 09/923,971, filed August 7, 2001, now U.S. Patent No. 6,612,448 which is a continuation of Application No. 09/564,251, filed May 4, 2000, now U.S. Patent No. 6,334,540, which claims priority from provisional application serial number 60/154,907 entitled "Photo Album Bracket" filed September 21, 1999."

Abstract

Applicant is reminded of the proper language and format for an abstract of the disclosure. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided, as in lines 2 and 3.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 recites the limitation "members" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is noted that claim 31 sets forth a "member".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-23, 25, 27-29, and 31-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Ninni '125.

Ninni '125 is considered to disclose the subject matter capable of performing the method steps of: providing a display rack comprising a substantially horizontally oriented member (40) having first (right side of Figure 1) and second (left side of Figure 1) opposite ends and a substantially planar upper surface (31) and the member comprising first and second elongated members (36) that are spaced apart and substantially parallel; the member further comprising a first member (unnumbered - U-shaped wires) having a generally round cross section and a second member (31) having a planar surface; a securing portion (at 34) associated with the second end which includes means, i.e., peg hooks, for removably securing the rack to a substantially vertically oriented surface having openings therein; placing a product on the rack so

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that the product substantially entirely rests upon the upper surface (of 31); and contacting a slidable carriage (10) with the product engaging the horizontally oriented member whereby the carriage is movable (see 10, i.e., arrow, in Figure 1) towards and away from the vertically oriented surface and the carriage including engagement members (unnumbered - C-shaped elements connected to ends of 20) adapted to engage the member (40); the carriage (10) comprising a middle portion (at 20) extending between and above the first and second elongated members (36) and the members (C-shaped elements) slidable engaging the members (36).

Claims 21, 22, 25, 27, 29, 31, 33, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Eklof *et al.* '608.

Eklof *et al.* '608 are considered to disclose the subject matter capable of performing the method steps of: providing a display rack (see Figure 3) comprising a substantially horizontally oriented member having first (at 20) and upwardly turned second (between 20 and 21) ends and being defined by first (18) and second (20) substantially parallel, and spaced apart, elongated horizontally oriented members; a securing portion associated with the second end and having means (21), i.e., upwardly and rearwardly extending peg hooks, for removably securing the rack to a vertically oriented surface; contacting a slidable carriage (22) having a pair, i.e., rounded opposite edges, of engagement members (see Figure 3) with products and the carriage slidably engage the horizontally oriented member and having a middle portion (24) that extends between and above the horizontally oriented member; and a stop portion (20) associated with the first end.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ninni '125, alone.

Ninni '125 teaches the structure of a rack and method steps as advanced above.

The claim differs from Ninni '125 in requiring the products to be photo albums.

Although Ninni '125 does not disclose photo albums being stored in the rack, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed photo albums in the rack thereby increasing storage capabilities of the rack.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eklof *et al.* '608 as applied to claims 21, 22, 25, 27, 29, 31, 33, and 34 above, and further in view of Radocha *et al.* '535.

Eklof *et al.* '608 disclose the apparatus as advanced above.

The claim differs from Eklof *et al.* '608 in requiring a horizontal member having second ends that are turned up at a non-right angle.

Radocha *et al.* '535 teach that it is old in the art to have peg hooks that extend upwardly at a non-right angle.

It would have been an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made to have turned the second ends of the horizontally oriented

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member of Eklof *et al.* '608, at a non-right angle for ease in assembly of the apparatus on the pegboard.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21, 22, and 24-26 (method) are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 4-6 (method), respectively, of U.S. Patent No. 6,612,448. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made that the carriage of claim 21 need not be "unbiased" as claimed in claim 1 since the carriage of claim 1 could "contact" a product, thereby increasing securement of products placed therein while increasing ease in use to the consumer since the products can be removed therefrom with greater ease.

Also, claims 21, 31, 32, and 27 (method) are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 (method) of U.S. Patent No. 6,612,448. Although the conflicting claims are not identical, they are not patentably

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distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made that the member of claim 10 could define a horizontally oriented member, as called for in claim 21, thereby increasing ease in use to the consumer since a larger amount of products could be stored therein and viewed therefrom

Also, claim 21 (method) is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16 (method) of U.S. Patent No.

6,612,448. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made that the carriage of claim 21 need not be "unbiased" as claimed in claim 16 since the carriage of claim 1 could "contact" a product, thereby increasing securement of products placed therein while increasing ease in use to the consumer since the products can be removed therefrom with greater ease.

Further, claims 21, 32, and 27 (method) are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 (structure) of U.S. Patent No. 6,612,448. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made that the structure of claim 11 could perform the method steps of claim 21 thereby allowing increased ease in use to the consumer since the rack could be easily assembled.

Furthermore, claims 21, 23 and 33 (method) are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15 (structure) of U.S. Patent No. 6,612,448. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made that the elongated components of claim 15 would spaced apart and substantially parallel, as called for in claim 33, and then the structure of claim 15 could perform the method steps of claim 21 thereby allowing increased ease in use to the consumer since the rack could be easily assembled.

Finally, claims 21, 28, and 29 (method) are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 (structure) of U.S. Patent No. 6,612,448. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made that the structure of claim 17 could perform the method steps of claim 21 thereby allowing increased ease in use to the consumer since the rack could be easily assembled.

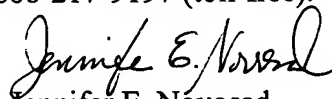
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
February 18, 2004